

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

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U.S. DISTRICT COURT
MIDDLE DISTRICT, ALA.

EDNA MARTIN and
MURRAY MARTIN

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PLAINTIFFS

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VS

CIVIL ACTION NO: 1:08CV96-WKW

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UNITED STATES OF AMERICA;
DEPARTMENT OF ARMY;
ARMY AND AIR FORCE EXCHANGE
SERVICE, an instrumentality of the
Department of the Army and of the Air
Force and G & K SERVICES, INC.

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JURY TRIAL DEMAND
AS TO G & K SERVICES, INC.

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DEFENDANTS

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**COMPLAINT FOR DAMAGES
FEDERAL TORT CLAIMS ACT
AND
DIVERSITY CLAIM**

I. Jurisdiction

1. This Complaint is brought under the Federal Tort Claims Act, 28 U.S.C. §§1346(b), 2671, et seq. as to Defendants United States of America and Army and Air Force Exchange Service (AAFES).

2. Plaintiff filed an administrative claim against the United States of America/U. S. Army/AAFES in accordance with 26 U.S.C. § 2675 on November 14, 2006.

3. The U. S. Army/AAFES, through the United States Army Claims Service

denied the claim on October 2, 2007, contending that the injury to Plaintiffs was caused by the acts or omissions of an independent contractor, G & K Services, Inc. Plaintiffs submit they have exhausted their administrative remedies under 28 U.S.C. §2675.

4. The Plaintiffs asks the Court to take pendant jurisdiction over the Defendant G & K Services, Inc. a foreign corporation doing business in the State of Alabama, pursuant to 28 U.S.C. §1367.

II. Identification of the Parties

5. The Plaintiffs Edna Martin and Murray Martin are husband and wife, and are residents and citizens of the United States, residing in Enterprise, Coffee County, Alabama. Each of them is over the age of 19 years.

6. Suit is brought against the United States of America because the United States Army/AAFES is owner and landlord of the Fort Rucker Army and Air Force Exchange Service PX facility on Fort Rucker, Alabama. Specifically, the Fort Rucker AAFES PX Main Store is managed and maintained by the United States Army and/or its designee Army and Air Force Exchange Service.

7. G & K Services, Inc. is a Minnesota corporation with its principal place of business in Minneapolis and St. Paul, Minnesota, and doing business by agent in the State of Alabama. The claims against G & K Services, Inc. are based on diversity of citizenship under 28 U. S. C. §1332. The damages demanded exceed \$75,000,

exclusive of interest and costs.

III. Description of Events

8. Throughout all times pertinent to this action, Edna Martin is the dependent of Murray Martin, a retired warrant officer of the Army National Guard.

9. On or about February 14, 2006, Edna Martin was a guest/invitee of the Fort Rucker AAFES Main Store PX on Fort Rucker, having gone there for the purpose of shopping. On February 14, 2006 Edna Martin tripped/slipped on a rug or mat at or near the entrance to the main PX store and fell down. Upon information and belief, Plaintiff alleges the rug/mat lacked proper weight and/or a type adhesive to ensure it remained flat and level on the floor surface. Defendants knew of the unreasonable dangerous condition and neither corrected nor warned the Plaintiff of it. Plaintiffs aver the Defendants had knowledge and were on notice that the mats/rugs constituted a hazard. Plaintiff did not have any knowledge of the dangerous condition and defect and could not have reasonable been expected to discover it. Defendants' failure to correct the condition or warn Plaintiff constituted negligence, and such negligence was a proximate cause of the occurrence in question and the Plaintiff Edna Martin's resulting bodily injuries.

IV. Cause of Action Against United States of America and Army-Air Force Exchange Service.

10. Paragraphs 1-9 are incorporated herein by reference.

11. Defendants knew of the unreasonable dangerous condition and neither corrected nor warned the Plaintiff of it. Plaintiff did not have any knowledge of the dangerous condition and could not have reasonably been expected to discover it. Defendants' failure to properly maintain the mat/rug, to properly supervise the products placed in the Fort Rucker AFFES PX per its contract with G & K Services, Inc. and to correct the condition or to warn the Plaintiff constitutes negligence, and such negligence was the proximate cause of the occurrence in question and or the Plaintiff's resulting injuries.

12. As a result of the above described occurrence, the Plaintiff Edna Martin suffered severe personal injuries, including a left olecranon fracture and superior pubic ramus fracture on the left, and injury to her hip. Some of the injuries are permanent in nature. The Plaintiff Edna Martin has suffered great physical pain and mental anguish due to such injuries in the past, and will continue to suffer such pain and anguish in the future.

13. As a result of said injury, the Plaintiff Edna Martin has been physically impaired and disfigured and will continue to be so impaired and disfigured in the future.

14. As a proximate result of the injuries described above, the Plaintiff Edna Martin has incurred medical expenses in the amount of \$12,482.00, and in reasonable probability will continue to incur such expenses in the future.

15. As a proximate result of the Defendants' negligence, Edna Martin was caused to suffer the following injuries and damages:

(a) She has sustained severe, personal injuries, some of which are believed to be permanent, which include broken bones in the elbow, pelvic area and hip area, which required surgery;

(b) She has incurred medical expenses;

(c) She has suffered great pain of body and mind, and will continue to suffer such pain in the future; and

(d) She has suffered severe mental anguish.

WHEREFORE, Plaintiff Edna Martin demands judgment against the Defendant United States of America, U. S. Army and AAFES for \$250,000.00 and cost of court.

V. Cause of Action Against G & K Services, Inc.

16. Paragraphs 1-15 are incorporated herein by reference.

17. G & K Services, Inc. upon information and belief, entered into a contract with AAFES to provide uniform and dust control rental services for AAFES facilities located in the United States. G & K Services, Inc. was negligent in its selection, placement and maintenance of the mats/rugs which were placed at the AAFES Main Store PX at Fort Rucker, Alabama.

18. Upon information and belief G & K Services, Inc. was responsible for the selection, cleaning, exchange, maintenance and replaced of the rugs/mats used at

the AAFES PX Main Store at Fort Rucker, Alabama, and pursuant to its contract with Defendants had sole responsibility for selection, placement and maintenance of the mats at the Fort Rucker AAFES Main Store PX.

19. Upon information and belief, G & K Services, Inc. negligently failed to select, maintain, replace or repair the rugs/mats at the Fort Rucker PX which were in place on February 14, 2006, and insure the rugs/mats were in a reasonably safe condition. G & K Services, Inc. breached that duty when it failed to reasonably and properly place and/or maintain the rugs/mats. Further, G & K Services, Inc. failed to correct the condition or warn the Plaintiff and the public of the condition which constitutes negligence, and such negligence was the proximate cause of Plaintiff's fall and her injuries as set out in paragraph 15. Further, upon information and belief Defendant G & K Services, Inc. negligently failed to place, service, inspect and maintain the rugs/mats located at the Main PX at Fort Rucker in accordance with the requirements of the contract it held with Defendants United States of America and/or Army and Air Force Exchange Service.

20. As a proximate result of G & K Services, Inc.'s negligence, Edna Martin was caused to suffer the injuries and damages as set out in paragraphs 12-15 hereof.

WHEREFORE, Plaintiff Edna Martin demands judgment against the Defendant G & K Services, Inc., Inc. in the amount of \$500,000.

VI. Claim of Murray Martin

21. The paragraphs of 1-20 are incorporated herein by reference.

22. As a proximate result of the negligence of the Defendants United States of America, Army and Air Force Exchange Service and G & K Services, Inc., Plaintiff Murray Martin was caused to lose the care, comfort, society, and consortium of his wife Edna Martin.

WHEREFORE, Plaintiff Murray Martin demands judgment against the Defendants for \$100,000.

VII. Combined and Concurrent Negligence

23. Plaintiffs readopt and reallege the allegations contained in paragraphs 1-22 as if fully set out herein.

24. Plaintiffs allege that the wrongful acts of the Defendants combined and concurred, proximately causing the injuries to Edna Martin as described in paragraphs 12-15 hereof, and the injuries to Murray Martin as described in paragraph 22. As a proximately consequence and result of Defendants' wrongful conduct and the claims referenced above, Plaintiffs were caused to suffer injuries as more fully set in paragraphs 12-15 and 22 hereof.

WHEREFORE, Plaintiff Edna Martin demand judgment against the Defendants United States of America, U. S. Army and AAFES in the amount of \$250,000, and against the Defendant G & K Services, Inc. in the amount of \$500,000 and costs. Plaintiff Murray Martin demands judgment against the Defendants in the amount of

\$100,000 and costs.

Dated this 11 day of February, 2008.

M. D. Marsh

M. Dale Marsh (MAR040)
Attorney for Plaintiffs

OF COUNSEL:

MARSH, COTTER & STEWART, LLP

P. O. Box 310910

Enterprise, Alabama 36331

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334-393-1396 (Facsimile)

JURY DEMAND

Plaintiffs demand a trial by jury as to their claims against G & K Services, Inc.

M. D. Marsh

M. Dale Marsh

DEFENDANTS TO BE SERVED BY CERTIFIED MAIL AS FOLLOWS:

Army and Air Force Exchange Service

Office of General Counsel

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Dallas, Texas 75265-0060

United States of America and U. S. Army

c/o Honorable Leura Garrett Canary

United States Attorney

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and

Attorney General of the United States

U. S. Department of Justice

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Minnetontaka, Minnesota 55434

Court Name: U S DISTRICT COURT - AL/M
Division: 2
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Amount: \$350.00

CHECK
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Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

EDNA MARTIN ET AL V. UNITED STATES
OF AMERICA DEPT OF ARMY ET AL